

CAPLAN, HECHT & MENDEL, L.L.C.

ATTORNEYS & COUNSELORS AT LAW

LAFAYETTE B. MENDEL HOUSE
20 TRUMBULL STREET
NEW HAVEN, CONNECTICUT 06511-6301

TELEPHONE (203) 772-0070 FACSIMILE (203) 773-0395
e-mail: lawoffices@chsm-law.com
web address: www.chsm-law.com

Mail Reply To:
P.O. BOX 9505
NEW HAVEN, CONNECTICUT 06534-0505

GEOFFREY A. HECHT*
NANCY K. MENDEL

JOSHUA D. HECHT†

*Also Admitted in Florida

†Also Admitted in New York

MILTON I. CAPLAN
Of Counsel

DONNA M. CAROTENUTO
Legal Assistant

MARTIN M. MERRIAM 1935-1983
BERNARD J. VIRSHUP 1952-1992

TESTIMONY OF NANCY K. MENDEL Environmental Attorney, Principal CAPLAN, HECHT & MENDEL, LLC Before the COMMERCE COMMITTEE March 8, 2011

Re: Raised Bill No. 6526: An Act Concerning Brownfield Remediation and Development as an Economic Driver

I would like to express support for Section 17. of Raised Bill 6526, but with critical deletions to subsection 17(b) of the Bill, removing restrictions on the number and types of brownfields that can take advantage of the program.

I am an environmental attorney with close to 20 years experience working on the clean-up and redevelopment of brownfields, large and small, on behalf of buyers, sellers, private developers, manufacturers, municipalities, non-profits and fortune 500 companies in every county in the State. I have served as outside environmental counsel to the City of New Haven and the City of West Haven on several of their respective MDP projects, and to REX Development, the economic development entity for the fifteen towns served by the South Central Regional Council of Governments (SCRCOG) on their DECD and EPA brownfield assessment and remediation grant and loan programs, and have seen first hand the challenges to Brownfields' site redevelopment. I have worked in the trenches with the Connecticut Transfer Act, the Voluntary Remediation Programs, the Licensed Environmental Professional program, Covenants not to Sue, Environmental Land Use Restrictions and all aspects of the Remediation Standard Regulations.

Over the last 20 years, I have been involved in various legislative and regulatory initiatives as a member of Coalition for Clean Sites back in the mid-90s, as past Chair of the Environmental Section of the CBA, and most recently as a member of a group of volunteers who drafted the Comprehensive Brownfields Remediation and Revitalization Program, a version of which is currently found in Section 17 of RB 6526.

No one appears to disagree with the statement that Connecticut is burdened with contaminated properties that are lying boarded up, idle, or under-utilized ("Brownfields") and

that (i) public resources to clean-up these sites are increasingly scarce, and (ii) if not cleaned up and redeveloped, these sites pose a threat to the public's health, degradation to our environment and comprise an increasing liability to the state.

Faced with this scenario, Connecticut, which lags behind other states in the success of efforts to effectively and efficiently return Brownfields – large and small - to productive reuse, is in need of a comprehensive one-stop program specifically designed to encourage, attract and incentivize owners and developers with no prior connection to, or liability for contamination at such properties, to commit private resources to purchase, investigate, clean-up and redevelop these sites. A one-stop comprehensive program, as laid out in Section 17., will provide necessary clarity, predictability, simplicity, certainty and expediency, all geared to attract redevelopment and jobs in tough economic times and scarce public resources, and at the same time limit the state's continuing liability for the potential clean-up of these sites.

Specifically, Section 17. allows eligible brownfields developers, in exchange for agreeing to investigate and remediate contamination found at an eligible property, to take ownership of these sites and assume liability only to the extent of cleaning up the property itself -- while being released from the obligation to "chase" any possible off-site contamination. The developer would retain the obligation currently in place under state law to report to the Department of Environmental Protection any significant environmental hazard found to be migrating off-site. Further, those taking advantage of this program by taking ownership of brownfields that meet the definition of an "establishment" under the Connecticut Transfer Act, would not be required to enter the Transfer Act Program. Finally, upon approval of the remediation, DEP would be required to issue a "Notice of Completion of Remedy / No Further Action" letter, providing a critical end point to the process and releasing the developer from further state liability with respect to approved cleanup conducted under the program.

Prior to initiating any remediation of the property, an eligible party must submit a remedial plan for approval by the Department of Environmental Protection, satisfy the same public notice required for all current site clean-up programs, and then remediate the site to satisfy the same State clean-up standards (the Remediation Standard Regulations) required to be met for all current clean-up programs. Participants in the Section 17. program, will be afforded expedited permitting and reliable approval timeframes, thereby avoiding costly and unreasonable delays in site evaluation, clean-up and redevelopment. With limited public and private resources available,

When viewed as whole, Section 17 goes a long way toward spurring private development of brownfield sites, without the use of public funds. However, the conditions in subsection 17(b) limiting the number of sites in the program and adding social and economic criteria to eligibility must be deleted as there is no public funding component to the program demanding such limits and these are irrelevant and potentially detrimental to the goal of timely brownfields redevelopment. They would undoubtedly result in the delay of remediation, increased redeveloper costs for professional services and would add a level of political activity to what should ideally be a straightforward real estate and environmental cleanup effort.

Thank you.